THE HONORABLE RICARDO S. MARTINEZ 1 2 3 4 5 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 6 OSTERHAUS PHARMACY, INC. on behalf of itself and all others similarly situated, 7 8 Plaintiff, 9 Case No. 2:23-cv-01500-RSM 10 CVS HEALTH CORPORATION, CVS Hon. Ricardo S. Martinez PHARMACY, INC., CAREMARK Rx, L.L.C. (f/k/a CAREMARK Rx, INC.), CAREMARK, SUPPLEMENTAL DECLARATION OF 11 L.L.C., CAREMARKPCS, L.L.C., STEVEN D. MCCALL 12 CAREMARK PCS HEALTH L.L.C., CAREMARK IPA, L.L.C., CAREMARK PART D SERVICES, LLC, AETNA INC., 13 AETNA HEALTH HOLDINGS, LLC, AND 14 AETNA HEALTH MANAGEMENT, LLC, 15 Defendants. 16 I, Steven D. McCall, declare as follows: 17 I am a legal adult of sound mind, have knowledge of the facts stated in this 18 1. declaration, and, if called on to do so, could testify competently to those facts. 19 2. On or about December 21, 2023, I executed a declaration in this matter. 20 3. This declaration incorporates and supplements my December 2023 declaration. 21 4. Unless redefined for clarity or otherwise specified, defined terms have the same 22 meaning as in my December 2023 declaration. 23 5. Exhibits A through C, referred to below, are attached to this declaration. 24 Exhibits 1 through 9 were attached to my December 2023 declaration. 6. 25 26

- 7. As noted in paragraph 29 of my December 2023 declaration, throughout Osterhaus's participation in Caremark's pharmacy networks, the Osterhaus Provider Agreement incorporated multiple versions of the Provider Manual.
- 8. In addition to the versions of the Provider Manual mentioned in my December 2023 declaration, on January 1, 2010, the 2010 CVS Caremark Provider Manual (the "2010 Provider Manual") went into effect. A true and correct copy of an excerpt from the 2010 Provider Manual is attached to this declaration as **Exhibit A**.
- 9. On January 1, 2012, the 2012 CVS Caremark Provider Manual (the "2012 Provider Manual") went into effect. A true and correct copy of an excerpt from the 2012 Provider Manual is attached to this declaration as **Exhibit B**
- 10. On January 1, 2014, the 2014 CVS Caremark Provider Manual (the "2014 Provider Manual") went into effect. A true and correct copy of an excerpt from the 2014 Provider Manual is attached to this declaration as **Exhibit C**.
- 11. The 2010 Provider Manual, the 2012 Provider Manual, and the 2014 Provider Manual, like the versions of the Provider Manual referenced in my 2023 declaration, each contain an amendment provision stating that "[f]rom time to time, and notwithstanding any other provision in the Provider Agreement (which includes the Provider Manual), Caremark may amend the Provider Agreement, including the Provider Manual or other Caremark Documents, by giving notice to Provider of the terms of the amendment and specifying the date the amendment becomes effective." (*See* Exhibit A, 2010 Manual, p. 43; Exhibit B, 2012 Manual, p. 50; Exhibit C, 2014 Manual, p. 45.)
- 12. This amendment provision further states that, based on a provider's submission of "claims to Caremark after the effective date of any notice or amendment, the terms of the notice or amendment is accepted by Provider and is considered part of the Provider Agreement." (*See* **Exhibit A**, 2010 Manual, p. 43; **Exhibit B**, 2012 Manual, p. 50; **Exhibit C**, 2014 Manual, p. 45.)

1	13. In addition to the amendment provision, the 2010 Provider Manual, the 2012
2	Provider Manual, and the 2014 Provider Manual each have an arbitration provision. (See Exhibit
3	<b>A</b> , 2010 Manual, p. 43; <b>Exhibit B</b> , 2012 Manual, p. 50; <b>Exhibit C</b> , 2014 Manual, pp. 45–46.)
4	14. Osterhaus submitted reimbursement claims to Caremark after the 2010 Provider
5	Manual went into effect.
6	15. Osterhaus submitted reimbursement claims to Caremark after the 2012 Provider
7	Manual went into effect.
8	16. Osterhaus submitted reimbursement claims to Caremark after the 2014 Provider
9	Manual went into effect.
10	17. The 2010 Provider Manual, the 2012 Provider Manual, and the 2014 Provider
11	Manual each were in effect before the beginning of the period that is the subject of Osterhaus's
12	claims in this matter. The 2012 Provider Manual "supersede[d]" the 2010 Provider Manual.
13	(Exhibit B, 2012 Provider Manual, p. 3.) The 2014 Provider Manual then "supersede[d]" the 2012
14	Provider Manual. (Exhibit C, 2014 Manual, p. 3.) Afterward, the 2016 Provider Manual
15	"supersede[d]" the 2014 Provider Manual. (Exhibit 4, 2016 Manual, p. 3.)
16	In accordance with 28 U.S.C. § 1746, I, Steven D. McCall, verify under penalty of perjury
17	that the statements in the above declaration are true and correct.
18	
19	
20	[Remainder of page intentionally blank]
21	[Kemanider of page intentionally brank]
22	
23	
24	
25	
26	

Executed on February 26, 2024

Steven D. McCall, R.Ph., MBA Vice President, Network Solutions

Executed on February 20, 2024

SUPPLEMENTAL DECLARATION OF STEVEN D. MCCALL  $-\,4$  CASE NO. 2:23–CV–01500–RSM